IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/02/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.8583 OF 1998

O.N.G.C. General Workers Union,
Rep. by its General Secretary
M. George Ravishekaran,
Chennai 42.
Union Regn.No.2602/CNI .. Petitioner

-Vs-

1. Group General manager,
O.N.G.C. Cauvery Project,
Karaikal.

2. Regional Director,
O.N.G.C. MMDA Buildings,
Egmore, Chennai 8.

3. Tamil Nadu Ex-serviceman
Corporation Limited,
West Mada Street, Saidapet,
Chennai 15. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus as stated therein.

For Petitioner : Mr.J. Narayanamurthy

For Respondents 1-2 : Mr.N.R. Chandran
Senior Advocate for
Mr.P. Arulmudi

:J U D G M E N T

This writ petition has been filed on behalf of O.N.G.C. General Workers Union espousing the cause of nine persons who were working as Instrument Technicians under the Oil and Natural Gas Corporation Limited, the respondent No.1. Prayer has been made for issuing Writ of Mandamus directing the respondents 1 & 2 to regularise the services of nine employees.

2. It has been asserted that nine persons were Ex-servicemen and had been discharged from Defence Services on completion of their tenures. It is

further submitted that the respondent No.3, the Tamilnadu Ex-servicemen Corporation Limited, in short TEXCO, had interviewed these nine persons for the post of Instrument Maintenance Mechanics which is in the category of Instrument Technicians. It is further stated that TEXCO has taken contract for the supply of labours to the respondents 1 & 2 and accordingly the nine persons were engaged. It is further stated that since the Government of India has issued notification dated 8.9.94 under Section 10(2) of the Contract Labour (Abolition & Regulation) Act, 1970, these nine persons should be treated as regular employees and should be absorbed accordingly.

3. In the counter affidavit, apart from denying generally the allegations, it has been stated that the question of regularisation has to be considered by the appropriate industrial adjudicator in the light of the observations made by the Supreme Court in the decision reported in 2001 SCC (L

& S) 1121 (STEEL AUTHORITY OF INDIA LIMITED AND OTHERS v. NATIONAL UNION WATERFRONT WORKERS AND OTHERS) and not by the High Court in exercise of jurisdiction under Article 226 of the Constitution of India.

4. In the reply affidavit filed on behalf of the petitioner, it has been stated that the materials on record clearly indicate that the concerned employees were engaged directly by ONGC and it is not necessary for them to approach industrial forum and the matter is required to be decided by the High Court. It has been further stated that the materials on record do not indicate the existence of any contract for supply of labour between TEXCO and the respondent No.1 and the concerned employees were engaged under a contract of service directly by the ONGC.

5. There is no dispute that in the original writ petition, the petitioner had banked upon the decision of the Supreme Court reported in 1 997 SCC (L&S) 1344 (AIR INDIA STATUTORY CORPORATION v. UNITED LABOUR UNION) and it had been pleaded that on abolition of the contract labour system, the concerned employees must be treated as regular employees under the principal employer. The aforesaid decision of the Supreme Court was reconsidered in the subsequent decision reported in 2001 SCC (L&S) 1121 and was specifically over-ruled. After considering various aspects, the relevant principles were summarised in paragraph 125 of the aforesaid decision, which is extracted hereunder :-

 ... 125. The upshot of the above discussion is outlined thus :

(1)(a) Before 28-1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression appropriate Government as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried n by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be

the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government;
(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (a) of Section 2 of the Industrial Disputes Act; if (i) the Central Government company/undertaking concerned or any undertaking concerned is included therein eo nomine, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by a railway company; or (c) by a specified controlled industry, then the Central Government will be the appropriate Government; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.
(2)(a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:
(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and

(2) having regard to
(i) conditions of work and benefits provided for the contract labour in the establishment in question, and
(ii) other relevant factors including those mentioned in subsection (2) of Section 10;

(b) Inasmuch as the impugned notification issued by the Central Government on 9-12-1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on

or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

(4) We overrule the judgment of this Court in Air India case prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court,for absorption of contract labour following the judgment in Air India case shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1)of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service,, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/ camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it so that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

It was further observed in paragraph 126 as follows :

 126. We have used the expression industrial adjudicator by design as determination of the questions aforementioned requires enquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be the Industrial Tribunal/Court whose determination will be amenable to judicial review.

6. Following the aforesaid decision, it would be more appropriate to leave the matter to be decided by the appropriate Industrial Forum. Even though the matter is required to be decided before the Industrial Forum, there is no embargo on the part of the respondents 1 & 2 to consider the question of regular absorption of the concerned employees. This aspect may be considered by the respondents 1 & 2 in an open mind notwithstanding the stand taken in the counter affidavit and the appropriate decision may be communicated to the concerned employees/Union within a period of three months from the date of communication of the present order. It goes without saying that if the concerned employees feel aggrieved by any such decision of the respondents 1 & 2, it would be open to them to approach the appropriate industrial forum seeking appropriate remedy in the matter. It is further made clear that as and when the occasion arises, the appropriate industrial forum should deal with the matter in accordance with law on the basis of the

materials on record.

7. Subject to the above observations, the writ petition is disposed of. No costs.

Index : Yes
Internet : Yes
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To
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